

Doc Code: AP.PRE.REQ

PTO/SB/33 (07-05)

Approved for use through xx/xx/200x OMB 0651-00xx

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional)	RECEIVED CENTRAL FAX CENTER SEP 29 2005
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)] on <u>9/29/05</u> Signature <u>David G. Maire</u> Typed or printed name <u>David G. Maire</u>		Application Number <b>09/838,787</b>	Filed <b>04/20/2001</b>
		First Named Inventor <b>Brian Lee Badger</b>	
		Art Unit <b>3629</b>	Examiner <b>Fisher, Michael J.</b>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the <input type="checkbox"/> applicant/inventor. <input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/86) <input checked="" type="checkbox"/> attorney or agent of record. <b>34,865</b> Registration number <input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34		<u>David G. Maire</u> Signature <b>David G. Maire</b> Typed or printed name <b>407-926-7704</b> Telephone number <b>9-29-2005</b> Date	
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.			
<input type="checkbox"/> Total of _____ forms are submitted.			

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.8. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

10/774,967

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Application of:

Group Art Unit: 3629

Applicant: Brian Lee Badger, et al.

Examiner: Fisher, Michael J.

Serial No.: 09/838,787

Atty. Docket: 20-EB-4068 (304)

Filed: 04/20/2001

Title: LOCOMOTIVE WRECK REPAIR

RECEIVED  
CENTRAL FAX CENTER  
SEP 29 2005Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450ARGUMENTS SUPPORTING PRE-APPEAL BRIEF REVIEW

The applicants submit the following concise set of arguments for which the pre-brief review is being requested. This summary should not be construed as limiting in any way the arguments that the applicants may present in a full Appeal Brief.

All of the pending claims are rejected as obvious in view of Wong 5,432,904. Wong describes an automobile repair estimating system wherein groups of parts are predefined, with the parts in the groups being physically related to each other. The example given in column 6, lines 15-18 is that a group of parts associated with the front bumper part would include not only the bumper, but also the face bar; rubber strip; guard; extension; support; filler; moulding; license bracket; and energy absorber. When the system of Wong is used to estimate the cost of a repair, the user must evaluate the damage and select those parts that are needed for the repair. The groups of parts of Wong are not associated with a collision event. As a result, Wong states at column 6, lines 26-28 that "Any number of parts can be selected for repair from a particular group of parts, and any number of groups of parts may be selected."

10/774,967

In contrast, the claims of the present application includes groups of parts that are specifically defined as "repair kits", where each repair kit includes those parts that would have to be replaced to repair damage caused by any one of a respective plurality of predefined collision events. Such kits are useful for quickly ordering all parts that may be necessary for repairing damage from a collision, without the need for a user to prepare an itemized listing for each collision. The Examiner admits that Wong does not teach such groups of parts associated with predefined collision events, stating on page 2 of the Final Rejection that "this would be inherent." The applicants argue that such grouping of parts is not inherent, since Wong specifically states in the above quoted passage that any number of parts from any number of groups can be selected for a repair, thereby teaching away from the present invention.

The Examiner also admits that Wong fails to teach communicating a user's assessment of damage and designating a specific repair kit (predefined) in response to the assessment prior to the vehicle arriving at a repair location. The Examiner argues that it would be obvious to take pictures prior to the vehicle arriving at the repair center and using the pictures to have parts ready. First, there is no suggestion or motivation in Wong to use pictures in this manner, and without some such suggestion in the art, there is no *prima facie* motivation for modifying the prior art in this manner. Second, the system of Wong is ineffective even if a picture is taken in advance of the vehicle arriving at a repair location, since only surface features would be shown, and Wong provides no grouping of parts that might be damaged under the visible surface, whereas the claimed repair kits do provide an identification of such parts.

The Examiner says that new claims 31-33 are addressed in his comments on the originally submitted claims. However, claim 31 includes the limitations of "identifying both the region of the locomotive affected by the collision and a level of collision severity prior to the locomotive arriving at the repair location; and recalling the repair kit associated with both the region of the locomotive affected by the collision and the level of collision severity of the collision prior to the locomotive arriving at the repair location." The groups of parts of Wong are not

10/774,967

associated with a collision event in a region of the vehicle or with a particular level of collision severity in that region. Thus, no *prima facie* support is provided for the rejection of claim 31.

Thus, the final rejections of claims 1-4, 6-8, 10-17, 20-24 and 28-33 under 35 USC 103(a) are defective and should be withdrawn.

Respectfully submitted,



David G. Maire (Reg. No. 34,865)

Beusse Brownlee Wolter Mora & Maire, P.A.  
390 North Orange Ave., Suite 2500  
Orlando, FL 32801  
Telephone: 407-926-7704